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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/957,459	09/21/2001	Warren Roach	166.0001	2504
25534	7590	08/11/2005	EXAMINER	
CAHN & SAMUELS LLP 2000 P STREET NW SUITE 200 WASHINGTON, DC 20036			TO, BAOQUOC N	
		ART UNIT		PAPER NUMBER
				2162

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/957,459	ROACH ET AL.
	Examiner	Art Unit
	Baoquoc N. To	2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 May 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 and 34-59 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-18 and 34-59 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: ____.

DETAILED ACTION

1. Claim 34, 44 and 59 are amended in the amendment filed on 05/24/05. Claims 1-18 and 34-59 are pending in this application.

Response to Amendment

2. The DECLARATION under 37 CFR 1.132 filed 09/07/2004 is insufficient to overcome the rejection of claims 1-18 and 34-59 based upon rejection of 1-3 (a) as set forth in the last Office action because: although factual evidence is preferable to opinion testimony, such testimony is entitle to consideration and some weight so long as the opinion is not on the ultimate legal conclusion at issue. While an opinion as to a legal conclusion is not entitled to any weight, the underlying basic for the opinion may be persuasive. *In re Chilowsky*, 306 F2d 908, 134 USPQ 515 (CCPA 1962) (expert opinion that an application meets the requirement of 35 U.S.C. 112 is not entitled to any weight; however, facts supporting a basic for deciding that the specification complies with 35 U.S.C. 112 are entitle to some weight. Although an affiant's or declarant's opinion on the ultimate legal issue is not evident in the case, "some weight ought to be given to persuasively supported statement of on ordinary skill in the art on what was not obvious to him.

Response to Arguments

3. Applicant's arguments filed 05/25/2005 have been fully considered but they are not persuasive.

As to claims 1 and 54, the applicant argues “the term operating is defined in the instant specification at paragraph 28 and along with the dictionary see pages 33 and 338 of the dictionary attached hereto as Exhibit 1.”

The examiner respectfully disagrees with the above argument. The Koshisaka discloses the API to intercept the any commands prior executing the commands. The API of Koshisaka perform exactly the same as the operating system as the applicant recited in amended claim 1. The functionality of both API in Koshisaka and the operating system from the current application having same working purpose. Therefore, under obviousness they are the same. Unless the definition of the operating system which recited in the specification of current application is incorporated in the claim, otherwise, the “operating system” will be interpreted as API.

Applicant also argues “the detecting by an API not by an operating system by supporting from the William Declaration. For example in Koshisaka, when an API command requesting file deletion is outputted by the application, the command is detected and hooked by the file manipulation monitoring section in the API. Subsequently, the processing section sends a different API command to the operating system. In other words, the instruction is first detected by the API and hooked. After the instruction is hooked, a different instruction is passed to the operating system, and the original command sent by the API to the operating system is not executed during performance of Koshisaka’s revision management system activities and William declaration paragraph 5, in contrast, the present invention does not pass different set of commands

to the operating system, but rather performs its independent function prior to allowing the original requested operating system commands to process."

The examiner respectfully disagrees with the above argument. The claim is much broader than what the applicant is trying to illustrate for example "detecting an instruction by an operating system to perform an operation and capturing the instruction right just before the instruction is executed." The passage discloses by Koshisaka is the much narrow scope than the scope of the invention that the applicant is trying to claim. Therefore Koshisaka teaching is read on to the recited claim invention.

Applicant also argues "as the result of detecting the instruction by the application, unlike the present invention, it is believed that Koshisaka provide a very limited layer of file protection, as file protection occurs only if the application is compatible with the Koshisaka assumptions of API behavior (Koshikasa, column 7, lines 59-64). See Williams declaration, Paragraph 8. Furthermore, the Examiner concedes that Koshisaka does storage location responsive to the detection of the instruction. The present invention differs completely in both design and implementation from Koshisaka."

The examiner respectfully disagrees with the above argument. As recited in the claim limitations, nowhere to be found that applicant claiming the file protection with multiple layers. Nor Koshisaka file protection is very limited to certain layer have to do anything with the recited claims. The scope of claims 1 and 54, are just "detecting an instruction by an operating system to perform an operation and capturing the instruction right just before the instruction is executed." In addition, independent claims 1, 34, 54

and 59 do not recite, "capturing the operating file and moving this capture file to an alternate storage location responsive to the detection of the instruction."

Applicant argue "Dunphy does not detect an instruction by an operating system. Dunphy much like Koshisaka and other references of record, is concerned with communications from the application programs themselves."

The examiner respectfully disagrees with the applicant. As dunphy discloses in the col. 3, lines 40-45 states the application program 8 resident on the computer system 1 to intercept all communication between. Under the same obviousness reason, the application program 8 perform the same function as to operating system as the applicant claim. Therefore, the application program 8 is the operating system.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 9-12, 15 and 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koshisaka (US. Patent No. 6,629,109 B1) in view of Dunphy et al. (US. Patent 5,638,509).

Regarding on claim 1, Koshisaka teaches in computing device, a method for archiving files comprising:

Detecting an instruction by an operating system to perform an operation on an operating system (the file manipulation monitoring section 21 of the file revision

management system 2 detects file manipulation which is going to be executed by the application 1 step S1...) (col. 6, lines 32-43); and

Although, Koshisaka does not explicitly teach capturing the operating file temporally proximate to the operation being performed on the operating file, responsive to the detection of the instruction. Koshisaka does not explicitly teach capturing the operating file temporally proximate to the operation being performed on the operating file, responsive to the detection of the instruction. However, Koshisaka teaches “the file manipulation monitoring section 201 constantly monitors API (Application Program Interface) commands which are outputted by the application 1 to the operating system 3 and thereby detects the file manipulation which is (going to be) executed by the application 1...In the case wherein the file manipulating is “file deletion” (“Yes” in the step S2), the file manipulation monitoring section 21 instructs the processing section 22 to store a “deleted file name” and a corresponding “backup file name” in the deleted file name memory section 23 (step 23). The deleted file name is the name of the file (to be) deleted by the application 1.” (col. 6, lines 35-54). This teaches the monitoring program send out the instruction to save the deleted file to the backup memory right at the time the program can execute the delete application. On the other hand, Dunphy also discloses capturing the operating file temporally proximate to the operation being performed on the operating file, responsive to the detection of the instruction (col. 3, lines 50-67 and col. 4, lines 1-10). Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Koshisaka’s

system to include storing the original file in the memory as taught in Koshisaka in order to allow the user to retrieve latter on when needed.

Regarding on claim 2, Koshisaka teaches capturing the operating file includes creating an archive file and storing the archive file in a storage location (col. 6, lines 35-45).

Regarding on claim 3, Koshisaka teaches the archive file includes copy of the operating file (col. 6, lines 35-45).

Regarding on claim 9, Koshisaka teaches the storage location includes a buffer (col. 5, lines 55-65).

Regarding on claim 10, Koshisaka teaches the first storage location includes a storage device (col. 6, lines 32-65).

Regarding on claim 11, Koshisaka teaches the storage device includes at least one of a group comprising a magnetic storage medium, an optical storage medium, and a solid state storage device (col. 6, lines 32-65).

Regarding on claim 12, Koshisaka teaches the storage location includes a directory disposed on said storage device (col. 6, lines 32-65).

Regarding on claim 15, Koshisaka teaches the operation causes a change in the operating file (col. 5, lines 32-65).

Claims 16-18 are rejected under the same reason as to claim 1.

Claim 54 is rejected same reason as claim 1, the command is intercepted by the API prior to execute the command (col. 6, lines 32-43).

Regarding on claim 55, Koshisaka teaches the method recited in claim 54, wherein said capturing occurs an instant before (the file manipulation monitoring section 21 of the file revision management system 2 detects file manipulation which is going to be executed by the application 1 step Si) (col. 6, lines 32-35) or after the operation is performed on the operating file.

Regarding on claim 56, Koshisaka does not explicitly teach the method recited in claim 54, wherein the operating file is a system file (file system) (col. 10, lines 38-42).

Regarding on claim 57, Koshisaka teaches the method recited in claim 54, wherein the operating file is a user file (user file) (col. 6, lines 5-43).

5. Claims 34-38, 43-51 and 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunphy (US. Patent No. 5,638,509) further in view of Koshisaka (US. Patent No. 6,629,109 B1).

Regarding on claim 34, Dunphy teaches in a computing device, a method for archiving files comprising:

Detecting an instruction by an operating system to perform an operation on an operating file (application program resident on the computer system to intercept all communication therebetween) (col. 1, lines 60-61);

Searching the first temporary storage location for the archive file responsive to the occurrence of the first event (the database 14 located in the data storage and protection apparatus 10 retrieves the event log 2) (col. 4, lines 40-42); and

Moving the archive to a second storage location responsive to a second event, the second storage location being a permanent storage location (uses the information contained therein to identify data files that are to be transmitted to data file backup media 21 for storage) (col. 4, lines 43-45).

Dunphy does not explicitly creating an archive file from the operating file and storing the archive file in a temporary first storage location temporally proximate to the operation being performed on the operating file and responsive to detecting the instruction. However, Dunphy teaches "if a data file change is detected, at step 34, the data file monitor 11 extracts data file status and activity information from the received communications and uses this data to maintain an event log 12 that indicates a history of all presently occurring, data file activity on the computer system 1..." (col. 3, lines 49-67 to col. 4, lines 1-21). In addition, Dunphy teaches "the data file monitor 11 creates an entry in event log 2 that identifies the data directory/data file the nature of the change, extent of the data file, the time that is change occurred and any other pertinent administrative information, such as a user identification, that may be pertinent to the operation of the data file storage and protection system 10" (col. 4, lines 33-38). On the other hand, Koshisaka teaches "the file manipulation monitoring section 201 constantly monitors API (Application Program Interface) commands which are outputted by the application 1 to the operating system 3 and thereby detects the file manipulation which is (going to be) executed by the application 1...In the case wherein the file manipulating is "file deletion" ("Yes" in the step S2), the file manipulation monitoring section 21 instructs the processing section 22 to store a "deleted file name" and a corresponding

“backup file name” in the deleted file name memory section 23 (step 23). The deleted file name is the name of the file (to be) deleted by the application 1.” (col. 6, lines 35-54). This teaches the monitoring program send out the instruction to save the deleted file to the backup memory right at the time the program can execute the delete application. These functionalities in Koshisaka and the current application are the same. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify the teaching of capturing the delete file to the back up memory as taught in Koshisaka in order to allow the user to retrieve latter on when needed.

Regarding on claim 35, Dunphy teaches the method recited in claim 34 wherein storing the archive file includes storing the archive file prior to the operation being performed on the operating file (creating a entry in the event log prior executing) (col. 4, lines 30-38).

Regarding on claim 36, Dunphy teaches the method recited in claim 35 wherein storing the archive file includes storing the archive file prior to the operation being performed on the operating file and subsequent to the operation being performed on the operating file (the entries is created based on the change is made to the file and change is made to the file after the intercepting command) (col. 3, lines 36-67).

Regarding on claim 37, Dunphy teaches the method recited in claim 34 wherein storing the archive file includes storing the archive file subsequent to the operation being performed on the operating file.

Regarding on claim 38, Dunphy teaches the method recited in claim 34 wherein the first temporary storage location includes a buffer (log) (col. 4, lines 24-34).

Regarding on claim 43, Dunphy teaches the method recited in claim 34 wherein the second storage location is an output buffer (col. 4, lines 40-45).

Regarding on claim 44, Dunphy teaches the method recited in claim 34 further comprising:

after storing the archive file in the first temporary storage location, updating a database to indicate that the archive file is located in the first storage location (col. 4, lines 25-67);

Determine a final destination for the archive file (col. 4, lines 25-67);

Moving the archive file from the first temporary location to an intermediate storage location (col. 4, lines 25-67);

Updating the database to indicate that the archive file are located in the intermediate storage location (col. 4, lines 25-67); and

After moving the archive file to the second storage location, updating the database to indicate that the archive file is located in the second storage location (col. 4, lines 25-67).

Regarding on claim 45, Dunphy teaches the method recited in claim 44 wherein the second location include a personal attached storage device (backup disk 21) (col. 4, lines 42-44).

Regarding on claim 46, Dunphy teaches the method recited in claim 45 wherein the second storage location includes a network attached storage device (the backup

device 20 can be collocated with computer system 1 or can be located remote from computer system 1 and connected thereto via a data communication) (col. 3, lines 30-34).

Regarding on claim 47, Dunphy teaches the method recited in claim 44 wherein the second storage location includes a peer-to-peer storage device (the backup device 20 can be collocated with computer system 1 or can be located remote from computer system 1 and connected thereto via a data communication) (col. 3, lines 30-34).

Regarding on claim 48, Dunphy teaches the method recited in claim 44 wherein the second storage location includes an Internet storage area network (the backup device 20 can be collocated with computer system 1 or can be located remote from computer system 1 and connected thereto via a data communication) (col. 3, lines 30-34).

Claims 49-51 are rejected under the same reason as to claim 44

Regarding on claim 58, Dunphy teaches the method recited in claim 34 wherein the first event is different from said second event (col. 4, lines 24-50).

Regarding on claim 59, Dunphy teaches in a computing device, a method for archiving files comprising:

Detecting an instruction by operating system to perform an operation on an operating file (application program resident on the computer system to intercept all communication therebetween) (col. 1, lines 60-61); and

Storing the archive file in a second storage device (a database 14 located in the storage and protection apparatus 10 retrieves the event log 12 and uses the information

contained therein to identify data files that are to be transmitted to a data file backup media 21 for storage) (col. 4, lines 41-44).

Dunphy does not explicitly teach creating an archive file from the operating file and moving the archive file to a first storage device temporally proximate to the operation being performed on the operating file, responsive to detecting the instructions. However, Dunphy teaches "if a data file change is detected, at step 34, the data file monitor 11 extracts data file status and activity information from the received communications and uses this data to maintain an event log 12 that indicates a history of all presently occurring, data file activity on the computer system 1..." (col. 3, lines 49-67 to col. 4, lines 1-21). In addition, Dunphy also teaches "the data file monitor 11 creates an entry in event log 2 that identifies the data directory/data file the nature of the change, extent of the data file, the time that is change occurred and any other pertinent administrative information, such as a user identification, that may be pertinent to the operation of the data file storage and protection system 10" (col. 4, lines 33-38). This suggests that changed instruction is intercepted and an entry log is created and stored in the event log. On the other hand, Koshisaka teaches "the file manipulation monitoring section 201 constantly monitors API (Application Program Interface) commands which are outputted by the application 1 to the operating system 3 and thereby detects the file manipulation which is (going to be) executed by the application 1...In the case wherein the file manipulating is "file deletion" ("Yes" in the step S2), the file manipulation monitoring section 21 instructs the processing section 22 to store a "deleted file name" and a corresponding "backup file name" in the deleted file name memory section 23

(step 23). The deleted file name is the name of the file (to be) deleted by the application 1." (col. 6, lines 35-54). This teaches the monitoring program send out the instruction to save the deleted file to the backup memory right at the time the program can execute the delete application. These functionalities in Koshisaka and the current application are the same. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modifying Dunphy's system to include capturing the delete file to the back up memory as taught in Koshisaka in order to allow the user to retrieve latter on when needed.

6. Claims 4-8 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koshisaka (US. Patent No. 6,629,109 B1) in view of Dunphy et al. (US. Patent No. 5,638,509).

Regarding on claim 4, Koshisaka does not explicitly teach the archive files includes portions of the operating file. However, Dunphy teaches "the data file monitor 11 creates entries in event log 12 that identifies the data directory/data file, the nature of the change, extent of the data file, the time that this change occurred and any other pertinent administrative information..." (col. 4, lines 33-37). This suggests the event log creating entry containing the changes of the file. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Koshisaka's system to include the entry containing changes to the file as taught in Dunphy in order to provide the system retrieve and restore partial of the file in the event of users change their mind.

Regarding on claim 5, Koshisaka does not explicitly teach the archive file includes pointers directed to one or more storage locations, wherein each of the one or more second storage locations contains at least a portion of the operating file. However, Dunphy teaches “a database 14 located in the data storage and protection apparatus 10 retrieves the event log 12 and uses the information contain therein to identify data files that are to be transmitted to a data file backup media 21 for storage. The database also contains a complete history of all data file changes since it stores the event log entries in its history file” (col. 4, lines 41-46). This suggests the database 14 is the second storage having different entries of a file. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Koshisaka’s system to include the entry containing changes to the file as taught by Dunphy in order to provide the system retrieve and restore partials of the file from the event log in the event of users change their mind.

Regarding on claim 6, Koshisaka does not explicitly teach capturing the file includes saving the archive file prior to the operation being performed on the operating file. However, Dunphy teaches “the data file monitor 11 creates entries in event log 12 that identifies the data directory/data file, the nature of the change, extent of the data file, the time that this change occurred and any other pertinent administrative information...” (col. 4, lines 33-37). This suggests the event log creating entry containing the changes of the file, is the saving the archive file prior the executing the instruction. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Koshisaka’s system to include the entry

containing changes to the file as taught in Dunphy in order to provide the system retrieve and restore partial of the file in the event of users change their mind.

Regarding on claim 7, Koshisaka does not explicitly teach the file includes saving the archive file subsequent to detecting the instruction to perform the operation. However, Dunphy teaches “the data file monitor 11 creates entries in event log 12 that identifies the data directory/data file, the nature of the change, extent of the data file, the time that this change occurred and any other pertinent administrative information...” (col. 4, lines 33-37). This suggests the event log creating entry containing the changes of the file, is the saving the archive file prior the executing the instruction. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Koshisaka’s system to include the entry containing changes to the file as taught in Dunphy in order to provide the system retrieve and restore partial of the file in the event of users change their mind.

Regarding on claim 8, Koshisaka does not explicitly teaches capturing the file includes saving the archive file subsequent to the operation being performed on the operating file. Dunphy teaches “the data file monitor 11 creates entries in event log 12 that identifies the data directory/data file, the nature of the change, extent of the data file, the time that this change occurred and any other pertinent administrative information...” (col. 4, lines 33-37). This suggests the event log creating entry containing the changes of the file, is the saving the archive file prior the executing the instruction. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Koshisaka’s system to include the entry

containing changes to the file as taught in Dunphy in order to provide the system retrieve and restore partial of the file in the event of users change their mind.

Regarding on claim 13, Koshisaka doest not explicitly teach determining whether the operating file has previously been captured prior to capturing the file. However, Dunphy teaches "if a data change is detected, at step 34, the data file monitor 11 extracts data file status an activity information from the received communications and uses this data to maintain an event log 12 indicate a history of all presently occurring data file activity on the computer system1..." (col. 3, lines 64-67 to col. 4, lines 1-21). This suggests that the event log 12 storing the file prior the change made to the file. Therefore,

Regarding on claim 14, Koshisaka teaches determining whether the operating file has previously been captured prior to capturing the file (col. 6, lines 32-65).

7. Claims 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunphy et al. (US. Patent No. 5,638,509) in view Koshisaka (US. Patent No. 6,629,109 B1) and further in view of Midgely et al. (US. Patent No. 5,608,865).

Regarding on claim 39, Dunphy and Koshisaka do not explicitly teach the method recited in claim 34 wherein the first event includes message from a timer. However, Midgely teaches "the protected server's protection agent registers with the Netware file system's File system Monitor feature. This registration requests that the agent be notified when a client a requests a file open operation, prior to the file system's execution of the open operation" (col. 7, lines 59-63). This suggests the notification is

the message from a timer. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Dunphy and Koshisaka's system to include notification as taught by Midgely in order to notify the user the changes that is about to be made to the file to allow the user to take the next appropriate actions.

Regarding on claim 40, Dunphy and Koshisaka do not explicitly teach the method recited in claim 34 wherein the first event includes a message from a program resident on the computing device. However, Midgely teaches "the protected server's protection agent registers with the Netware file system's File system Monitor feature. This registration requests that the agent be notified when a client a requests a file open operation, prior to the file system's execution of the open operation" (col. 7, lines 59-63). This suggests the resident program is the agent. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Dunphy and Koshisaka's system to include an agent as taught by Midgely in order to notify the change that is about to be made to the file to allow the user to take the next appropriate actions.

Regarding on claim 41, Dunphy and Koshisaka do not explicitly teach the method recited in claim 34 wherein the second event includes a message from a timer. However, Midgely teaches "the protected server's protection agent registers with the Netware file system's File system Monitor feature. This registration requests that the agent be notified when a client a requests a file open operation, prior to the file system's execution of the open operation" (col. 7, lines 59-63). This suggests the same concept

of notification system. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Dunphy and Koshisaka's system to include an notification system as taught by Midgely in order to notify the user take appropriate actions.

Regarding on claim 42, Dunphy and Koshisaka do not explicitly teach the method recited in claim 34 wherein the second event includes a message indicating when the second storage location is available. However, Midgely teaches "the protected server's protection agent registers with the Netware file system's File system Monitor feature. This registration requests that the agent be notified when a client a requests a file open operation, prior to the file system's execution of the open operation" (col. 7, lines 59-63). This suggests the same concept of notifying when there is enough space for backup. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention was made to modify Dunphy and Koshisaka's system to include an notification system as taught by Midgely in order to notify the user the space available to store the backup.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Baoquoc N. To whose telephone number is at 571-272-4041 or via e-mail BaoquocN.To@uspto.gov. The examiner can normally be reached on Monday-Friday: 8:00 AM – 4:30 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached at 571-272-4107.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231.

The fax numbers for the organization where this application or proceeding is assigned are as follow:

(571) -273-8300 [Official Communication]

Baoquoc N. To

August 4, 2005



JEAN M. CORRIELUS
PRIMARY EXAMINER